

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D.C. 20505

Legislative Counsel

OLC 79-0644/b

5 OCT 1979

Mr. James M. Frey
Assistant Director for Legislative
Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your request for the views of the Central Intelligence Agency on H.R. 70, the "Age Discrimination in Employment Amendments of 1979." The Bill proposes, among other things, to eliminate the mandatory retirement age of 60 years for members of the Foreign Service Retirement System. As H.R. 70 would not impact on the Central Intelligence Agency, we defer to those agencies which would be directly affected. However, the Bill does relate to issues of considerable importance raised in other proposed legislation regarding the Central Intelligence Agency Retirement and Disability System (CIARDS) and the statutory authority of the Director of Central Intelligence, embodied in Section 102(c) of the National Security Act of 1947 (50 U.S.C. 403 (c)), to terminate the employment of any CIA officer or employee whenever he deems such termination necessary or advisable in the interests of the United States.

Section 8 of H.R. 632, the "Age Discrimination in Federal Employment Act of 1979," for example, would qualify the Director's termination authority by prohibiting him from terminating a CIA employee solely on the basis of age. We strongly oppose this, or any, limitation on the Director's termination authority. The sensitive, special nature of our intelligence work requires the maintenance of maximum flexibility in personnel matters. Security factors and the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods are, however, the primary considerations involved in the Director's termination authority. Any qualification of this authority could result in the Agency having to defend a termination action in a public forum with the resulting risk of disclosure of sensitive intelligence sources and methods. The Director's special

termination authority was enacted so that such situations could be avoided; we believe that it is absolutely essential that this authority remain unfettered.

In light of the goal of H.R. 70, H.R. 632, and other Bills such as H.R. 2694 and H.R. 2730 to eliminate mandatory retirement provisions for certain Federal employees, we also wish to call your attention to the importance of the Central Intelligence Agency Retirement and Disability System (CIARDS) which was authorized by the Central Intelligence Agency Retirement Act of 1964 (50 U.S.C. 403 Note). Although not specifically addressed by any proposed legislation thus far, this special retirement system is characterized by provisions on mandatory retirement.

Approximately 30 percent of the Agency's employees qualify for coverage under CIARDS. The mandatory retirement point for those covered is 60 years of age for GS-17's and below, and 65 years of age for GS-18's and above. The Director of Central Intelligence may also, under Section 235 of CIARDS, place in a retired status a qualified employee who has completed at least 25 years of service or who is at least 50 years of age with at least 20 years of service. The Central Intelligence Agency Retirement Act of 1964 was designed to assist the Agency in improving its personnel management program by authorizing the establishment of a retirement system that included mandatory retirement for age provisions. In authorizing the creation of this system, the Congress attached special importance to the demanding nature of Central Intelligence Agency positions, and also recognized the special character of overseas intelligence work.

The Central Intelligence Agency does indeed have a crucial ongoing need to attract and retain a force of highly motivated careerists who are capable of being trained in unique skills. The demands of our overseas intelligence work generally require that these individuals be younger than usually called for in Government service. These demands include unique duties performed under difficult and sometimes dangerous conditions. The stresses and strains of uneven and uncertain hours of work, of duty in unhealthy locations, and of arduous assignments require personnel who possess a high degree of vigor, vitality, and endurance. An operational cadre with such physical and emotional characteristics is absolutely essential to the mission of the Agency. Experience has taught us that the nature of certain unique types of work in the Central Intelligence Agency requires a combination of mental,

physical, and psychological characteristics which are predominantly associated with the younger band of the age spectrum and have been built in as a basic and vital feature of this Agency's operational cadre management system.

It is clear that unique considerations relating to intelligence assignments demand that the mandatory retirement provisions of the Central Intelligence Agency Retirement and Disability System be retained to insure that the Agency can continue to discharge its critical statutory duties in the most effective way possible.

Because of the importance of the considerations outlined above, we wish to be kept closely informed regarding the development of an Administration position on H.R. 70 or on any related legislation pertaining to mandatory retirement from Federal employment which could impinge upon the Central Intelligence Agency or CIARDS.





Sincerely,

/s/

Frederick P. Hitz
Legislative Counsel

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